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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Deane Gardner

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EDEL, SHAPIRO & FINNAN, LLC
1901 RESEARCH BOULEVARD
SUITE 400
ROCKVILLE, MD 20850

EXAMINER

PHAN, JOSEPH T

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

12/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/757,241

Applicant(s)

GARDNER ET AL.

Examiner

Joseph T. Phan

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☒ Other: non-final action.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-5, 8, 11-12, 13-16, and 19-22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 8, 12, and 19 recite "a user" in line 3, "a user" in line 4, "the user" in lines 6, 11, 13, 15, "a plurality of users" in line 17, "at least one other user" in line 19 and "said user" in lines 19 and 20. Due to multiple recitations of "user" in the claim, it is not known if the "said user" is referring to the one of the plurality of users in line 17, the 'user' in line 3 or 4, or 'other user' in line 19. Examiner will interpret 'at least one other user' in line 19 as "at least one other different user" Appropriate clarification and/or correction is required.

Claims 2-5 and 11 being dependent upon rejected claim 1 and claims 13-16, 20-22 being dependent upon rejected claim 12 are also rejected.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-10 and 17-19 rejected under 35 U.S.C. 103(a) as being unpatentable over Teller et al., Patent #6,605,038 in view of Murakami, JP 05252068.

Regarding claims 8 and 19 Teller teaches a method for integrating personal data capturing functionality into a wireless communication device(col.7 lines 49-65) and for analyzing and supplying feedback information to a user, the method comprising: receiving personal data of a user by at least one personal parameter receiver, capturing the personal data in the wireless communication device(col.7 lines 49-65); and periodically transmitting the personal data from the wireless communication device to a network server over a wireless network(col.7 lines 12-38 and col.11 lines 57-67); at the network server, storing in a repository of personal data maintained by, or accessible from, the network server, personal data from the user(col.10 lines 25-49 and col.12 lines 1-4); at the network server, analyzing the personal data to generate feedback information for the user; and

at the network server, posting the feedback information to a web site that is accessible to the user(col.10 lines 25-49 and col.13 lines 31-67).

Teller does not specifically teach transmitting the feedback information from the network server to the user's wireless communication; and displaying the feedback information received from the network server on the portable wireless communication device to the user.

In the same field of endeavor, Murakami teaches transmitting the feedback information to the user's wireless communication; and displaying the feedback information received on the portable wireless communication device to the user(constitution and Fig.4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Teller to transmit and display feedback received on a wireless communication device as taught by Murakami(constitution and Fig.4) as this would provide current information to a user while exercising to allow the user to keep track of his status.

Regarding claims 6 and 17, Teller in view of Murkami teaches the method of claims 8 and 19 wherein said receiving, capturing, periodically transmitting, storing, analyzing and posting are performed with respect to personal data for each of a plurality of users and their corresponding wireless communication device personal data is transmitted to the network server upon receiving a user request(col.7 lines 16-18).

Regarding claims 7 and 18, Teller in view of Murkami teaches the method of claim 17 and further comprising comparing personal data for said user with personal

data for at least one other user, and wherein posting comprises posting comprises posting comparisons between personal data of said user and personal data of said at least one other user (fig.6-11; one other user is same as said user).

Regarding claim 9, Teller in view of Murkami teaches the method of claims 8 and 19 wherein analyzing further comprises generating for presentation to the user in the feedback information instructions from one or more of: a fitness instructor, physician, athletic trainer and nutritionist(Fig.6-11).

Regarding claim 10, Teller in view of Murkami teaches the method of claims 6 and 12 wherein posting comprises posting the feedback information to the web site that is accessible by the plurality of users comprising displaying at least a portion of the personal data to the user on a display of the wireless communication device(col.7 lines 50-52 and col.13 lines 30-40).

Allowable Subject Matter

5. Claims 1 and 12 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. Subsequently claims 2-5, 11 being dependent upon claim 1 and claims 13-16, 20-22 being dependent upon claim 12 would also be allowed.

The allowable subject matter comprises, among other features, the personal data corresponding to a number of steps counted during an activity of the user, comparing and posting the personal data of said user with personal data with at least one other different user from the received wireless data from a plurality of users.

Response to Arguments

6. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph T. Phan whose telephone number is (571) 272-7544. The examiner can normally be reached on Mon-Fri 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTP

December 21, 2007

JTP

RmPh 12/26/07
Barbara Zanning
AU 2614